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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF POLLUTION PREVENTION AND TOXICS

REGULATION OF A NEW CHEMICAL SUBSTANCE

PENDING DEVELOPMENT OF INFORMATION

In the matter of:

) Premanufacture Notice Number:

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P04-132

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Consent Order and Determinations Supporting Consent Order

TABLE OF CONTENTS

Preamble

- I. Introduction
- II. Summary of Terms of the Order
- III. Contents of PMN
- IV. EPA's Assessment of Risk
- V. EPA's Conclusions of Law
- VI. Information Required to Evaluate Human Health Effects

Consent Order

- I. Terms of Manufacture, Import, Processing, Distribution in Commerce, Use, and Disposal Pending Submission and Evaluation of Information
- II. Record-keeping
- III. Successor Liability Upon Transfer of Consent Order
- IV. Modification and Revocation of Consent Order
- V. Effect of Consent Order

Attachment A - Definitions

Attachment B - Notice of Transfer of Consent Order

I. INTRODUCTION

Under the authority of § 5(e) of the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2604(e)), the Environmental Protection Agency ("EPA" or "the Agency") issues the attached Order, regarding premanufacture notice ("PMN") P04-132 submitted by [] ("the Company"), to take effect upon expiration of the PMN review period. The Company submitted the PMN to EPA pursuant to section 5(a)(1) of TSCA and 40 CFR Part 720.

Under § 15 of TSCA, it is unlawful for any person to fail or refuse to comply with any provision of § 5 or any order issued under § 5. Violators may be subject to various penalties and to both criminal and civil liability pursuant to § 16, and to specific enforcement and seizure pursuant to § 17. In addition, chemical substances subject to an Order issued under § 5 of TSCA, such as this one, are subject to the § 12(b) export notice requirement.

II. SUMMARY OF TERMS OF THE ORDER

The Consent Order for this PMN substance requires the Company to:

- (1) Provide workers with personal protective equipment to prevent dermal exposure;
- (2) Label the PMN substance and provide Material Safety Data Sheets (MSDS) and worker training in accordance with the provisions of the Hazard Communication Program section;
- (3) Not use the PMN substance other than as described in the PMN, as an [] and/or as an [];
- (4) Distribute the PMN substance only to a person who agrees to follow the same restrictions and to not further distribute the PMN substance until it has been completely reacted; and
- (5) Maintain certain records.

III. CONTENTS OF PMN

Confidential Business Information Claims (Bracketed in the Preamble and Order): Company name, chemical identity, use, production volume, processing information, other information.

Chemical Identity

Specific: []

Generic: Ethylhexyl Oxetane

Use

Specific: [

]

Generic: additive for industrial applications

Maximum 12-Month Production Volume: [] kg/yr

Test Data Submitted with PMN:

- Glove permeation test data for the both the Polyvinyl Alcohol and the Silvershield/4H materials indicated that potentially exposed workers could be provided with Polyvinyl Alcohol gloves with a thickness of no less than 31.3 mils or Silvershield/4H sleeves with a thickness of no less than 2.7 mils for up to 8 hours
- Negative in Salmonella and E coli
- Negative for chromosome aberrations and CHL cells
- Acute oral study in rats - no deaths or signs of toxicity at 2000 mg/kg
- Acute dermal study in rats - no deaths or signs of toxicity at 2000 mg/kg
- 28-day oral study in rats (20, 100, 500 mg/kg) - increased weights and hypertrophy of the centrilobular hepatocytes, slight hypertrophy of the follicular cells of the thyroid at 500 mg/kg; NOAEL = 100 mg/kg
- minimal eye irritant
- strong dermal irritant
- not a dermal sensitizer, Magnusson and Kligman

ECOTOX: Predicted (P) and measured (M) toxicity values in mg/L (ppm) are:

fish (M) 96-h LC30 = 3.5 measured (M) static (S), nominal (N), hardness (H) 67
 fish (RT) 96-h LC50 = 2.1 M SR24,M H100
 fish (RT) 96-h LC50 = 3.5 M S,M H100

daphnid 48-h LC50 = 1.7 M S,M H250

algal 72-h EC50 (cells/mL (c)) = 0.690 M S,M H15

algal 72-h EC50 (area under growth curve(a)) = 0.690 M S,M H15

algal 72-h EC50 (growth rate (r)) = 1.0 M S,M H15

algal ChV EC10 c = 0.460 M S,M H15

algal ChV EC10 a = 0.540 M S,M H15

algal ChV r = 0.610 M S,M H15

IV. EPA'S ASSESSMENT OF RISK

The following are EPA's predictions regarding the probable toxicity and human exposure of the PMN substance, based on the information currently available to the Agency.

Human Health Effects Summary.

Absorption: EPA expects 20 percent absorption of the PMN chemical via skin, 100 percent via the lungs, and 60 percent via the GI tract.

Toxicological Endpoints of Concern and Basis for Concern: In a 28-day oral toxicity study on the PMN substance (OECD guideline 407), rats were given the chemical by oral gavage at 0, 20, 100, or 500 mg/kg/day. A no-observable adverse-effect level (NOAEL) of 100 mg/kg/day was concluded based on liver and thyroid abnormalities at a higher dose level.

Occupational Exposure: During use of the PMN substance, EPA expects dermal exposure of up to 4,300 mg/day resulting in a Margin of Exposure (MOE) of 8 via dermal exposure.

Occupational Exposure Summary:

	Process	Use 1 (Ink)	Use 2 (adhesive)
# Sites	[]	[]	[]
Total # of Workers with Exposure	[]	[]	[]
Days/year Exposure	[]	[]	[]
Dermal Exposure (mg/day)	1,700	4,300	880.00
Inhalation Exposure (mg/day) (worst-case)	0.19	31	1.3

Environmental Effects Summary:

If the PMN substance were to be used other than as described in the PMN, i.e., as an [] and/or as an [], there could be the potential for significant risk to the aquatic environment. For example, when the PMN was assessed for use as a [], the concentration of concern of 20 ppb in aquatic environments was predicted to be exceeded for greater than 20 days per year and surface water concentrations were predicted to reach up to 995 ppb.

V. EPA'S CONCLUSIONS OF LAW

The following findings constitute the basis of the Consent Order:

A. EPA is unable to determine the potential for environmental toxicity and liver and thyroid effects from dermal exposure to the PMN substance. EPA therefore concludes, pursuant to § 5(e)(1)(A)(i) of TSCA, that the information available to the Agency is insufficient to permit a reasoned evaluation of the environmental and human health effects of the PMN substance.

B. In light of the potential risk of systemic toxicity to humans and aquatic toxicity posed by the uncontrolled manufacture, import, processing, distribution in commerce, use, and disposal of the PMN substance, EPA has concluded, pursuant to § 5(e)(1)(A)(ii)(I) of TSCA, that uncontrolled manufacture, import, processing, distribution in commerce, use, and disposal of the PMN substance may present an unreasonable risk of injury to human health and the environment.

VI. INFORMATION REQUIRED TO EVALUATE HUMAN HEALTH AND ENVIRONMENTAL EFFECTS

Pending Testing. The Modified Order does not require submission of the following information at any specified time or production volume. However, the Order's restrictions on manufacturing, import, processing, distribution in commerce, use and disposal of the PMN substance will remain in effect until the Order is modified or revoked by EPA based on submission of the following data or other relevant information.

If the Company wishes to manufacture the PMN differently than required by the Consent Order, the Company should conduct and submit the following tests:

- A 90-day oral toxicity study in rodents (OPPTS 870.3100)
- Fish early-life stage toxicity test (rainbow trout) (OPPTS 850.1400/OECD 210)
- Daphnid chronic toxicity test (OPPTS 1300/OECD 202)

CONSENT ORDER

I. TERMS OF MANUFACTURE, IMPORT, PROCESSING,
DISTRIBUTION IN COMMERCE, USE, AND DISPOSAL
PENDING SUBMISSION AND EVALUATION
OF INFORMATION

[] ("the Company") is prohibited from manufacturing, importing, processing, distributing in commerce, using, or disposing of the chemical substance [] (P04-132) ("the PMN substance") in the United States, for any nonexempt commercial purpose, pending the development of information necessary for a reasoned evaluation of the environmental and human health effects of the substance, and the completion of EPA's review of, and regulatory action based on, that information, except under the following conditions:

TESTING

(a) Section 8(e) Reporting. Any information on the PMN substance which reasonably supports supports the conclusion that the PMN substance presents a substantial risk of injury to health or the environment required to be reported under EPA's section 8(e) policy statement at 43 Federal Register 11110 (March 16, 1978), shall reference the appropriate PMN identification number for this substance and shall contain a statement that the substance is subject to this Consent Order. Additional information regarding section 8(e) reporting requirements can be found in the reporting guide referenced at 56 Federal Register 28458 (June 20, 1991).

(b) Notice of Study Scheduling. The Company shall notify, in writing, the EPA Laboratory Data Integrity Branch (2225A), Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, of the following information within 10 days of scheduling any study required to be performed pursuant to this Order (including studies identified in section VI. of the Preamble), or within 15 days after the effective date of this Order, whichever is later:

- (1) The date when the study is scheduled to commence;
- (2) The name and address of the laboratory which will conduct the study;
- (3) The name and telephone number of a person at the Company or the laboratory whom EPA may contact regarding the study; and
- (4) The appropriate PMN identification number for each substance and a statement that the substance is subject to this Consent Order.

c) Good Laboratory Practice Standards and Test Protocols. Each study required to be performed pursuant

to this Order (including studies identified in section VI. of the Preamble) must be conducted according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792 and using methodologies generally accepted in the relevant scientific community at the time the study is initiated. Before starting to conduct any such study, the Company must obtain approval of test protocols from EPA by submitting written protocols. EPA will respond to the Company within 4 weeks of receiving the written protocols. Published test guidelines provide general guidance for development of test protocols, but are not themselves acceptable protocols. Approval of the test protocol does not mean pre-acceptance of test results.

(d) Unreasonable Risk.

(1) EPA may notify the Company in writing that EPA finds that the data generated by a study are scientifically valid and unequivocal and indicate that, despite the terms of this Order, the PMN substance will or may present an unreasonable risk of injury to human health or the environment. EPA's notice may specify that the Company undertake certain actions concerning further testing, manufacture, import, processing, distribution, use and/or disposal of the PMN substance to mitigate exposures to or to better characterize the risks presented by the PMN substance. Within 2 weeks from receipt of such a notice, the Company must cease all manufacture, import, processing, distribution, use and disposal of the PMN substance, unless either:

(2) within 2 weeks from receipt of the notice described in subparagraph (d)(1), the Company complies with such requirements as EPA's notice specifies; or

(3) within 4 weeks from receipt of the notice described in subparagraph (d)(1), the Company submits to EPA a written report refuting EPA's finding and/or the appropriateness of any additional requirements imposed by EPA. The Company may continue to manufacture, import, process, distribute, use

and dispose of the PMN substance in accordance with the terms of this Order pending EPA's response to the Company's written report. EPA will respond to the Company, in writing, within 4 weeks of receiving the Company's report. Within 2 weeks of receipt of EPA's written response, the Company shall comply with any requirements imposed by EPA's response or cease all manufacture, import, processing, distribution, use and disposal of the PMN substance.

PROTECTION IN THE WORKPLACE

(a) Establishment of Program. During manufacturing, processing, and use of the PMN substance at any site controlled by the Company, the Company must establish a program whereby:

(1) General Dermal Protection. Each person who is reasonably likely to be dermally exposed in the work area to the PMN substance through direct handling of the substance or through contact with equipment on which the substance may exist is provided with, and is required to wear, personal protective equipment that provides a barrier to prevent dermal exposure to the substance in the specific work area where it is selected for use. Each such item of personal protective equipment must be selected and used in accordance with 29 CFR 1910.132 and 29 CFR 1910.133.

(2) Specific Dermal Protective Equipment. In addition to the personal protective equipment described in subparagraph (a)(1) of this section, the following items are required:

(i) Gloves.

(ii) Chemical goggles or equivalent eye protection.

(3) Demonstration of Imperviousness. The Company is able to demonstrate by the following testing that each item of chemical protective clothing selected, including gloves, provides an impervious barrier to prevent dermal exposure during normal and expected duration and conditions of exposure within the work

area.

(i) Imperviousness Testing. Testing the material used to make the chemical protective clothing and the construction of the clothing to establish that the protective clothing will be impervious for the expected duration and conditions of exposure. The testing must subject the chemical protective clothing to the expected conditions of exposure, including the likely combinations of chemical substances to which the clothing may be exposed in the work area. Permeation testing shall be conducted according to the American Society for Testing and Materials (ASTM) F739 "Standard Test Method for Resistance of Protective Clothing materials to Permeation by Liquids or Gases." Results shall be recorded as a cumulative permeation rate as a function of time, and shall be documented in accordance with ASTM F739 using the format specified in ASTM F1194-89 "Guide for Documenting the Results of Chemical Permeation Testing on Protective Clothing Materials." Gloves may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift during which they are exposed to the PMN substance. Data on the glove testing conducted to date appears on page iv of the Preamble to this Order.

(b) Low Concentrations in Mixtures. If the PMN substance is present in the work area only as a mixture, the Company is exempt from the provisions of this protection in the workplace section if the concentration of the PMN substance in the mixture does not exceed 1.0 percent by weight or volume, or 0.1 percent by weight or volume if paragraph (g) of the Hazard Communication Program section of this Order identifies cancer as a potential human health hazard of the PMN substance. This exemption does not apply if the Company has reason to believe that during intended use or processing in the work area, the PMN substance in the mixture may be reconcentrated above the 1.0 or 0.1 percent level, whichever is applicable.

HAZARD COMMUNICATION PROGRAM

(a) Written Hazard Communication Program. The Company shall develop and implement a written hazard communication program for the PMN substance in each workplace. The written program will, at a minimum describe how the requirements of this section for labels, MSDSs, and other forms of warning material will be satisfied. The Company must make the written hazard communication program available, upon request, to all employees, contractor employees, and their designated representatives. The Company may rely on an existing hazard communication program, including an existing program established under the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR 1910.1200), to comply with this paragraph provided that the existing hazard communication program satisfies the requirements of this section. The written program shall include the following:

(1) A list of chemical substances known to be present in the work area which are subject to a TSCA section 5(e) consent order signed by the Company or to a TSCA section 5(a)(2) SNUR at 40 C.F.R. Part 721, subpart E. The list must be maintained in each work area where the PMN substance is known to be present and must use the identity provided on the MSDS for the substance required under paragraph (c) of this section. The list may be compiled for the workplace or for individual work areas. If the Company is required either by another Order issued under section 5(e) of TSCA, or by a TSCA section 5(a)(2) SNUR at 40 CFR Part 721, subpart E, to maintain a list of substances, the lists shall be combined with the list under this subparagraph.

(2) The methods the Company will use to inform employees of the hazards of non-routine tasks involving the PMN substance (e.g., cleaning of reactor vessels), and the hazards associated with the PMN substance contained in unlabeled pipes in their work area.

(3) The methods the Company will use to inform contractors of the presence of the PMN substance in the Company's workplace and of the provisions of this Order if employees of the contractor work in the Company's workplace and are reasonably likely to be exposed to the PMN substance while in the Company's workplace.

(b) Labeling. (1) The Company shall ensure that each container of the substance in the workplace is labeled in accordance with this subparagraph (b)(1).

(i) The label shall, at a minimum, contain the following information:

(A) A statement of the health hazards(s) and precautionary measure(s), if any, identified in paragraph (g) of this section or by the Company, for the PMN substance.

(B) The identity by which the PMN substance may be commonly recognized.

(C) A statement of the environmental hazard(s) and precautionary measure(s), if any, identified in paragraph (g) of this section, or by the Company, for the PMN substance.

(D) A statement of exposure and precautionary measure(s), if any, identified in paragraph (g) of this section, or by the Company, for the PMN substance.

(ii) The Company may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to individual stationary process containers.

as long as the alternative method identifies the containers to which it is applicable and conveys information specified by subparagraph (b)(1)(i) of this section. Any written materials must be readily accessible to the employees in their work areas throughout each work shift.

(iii) The Company need not label portable containers into which the PMN substance is transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer.

(iv) The Company shall not remove or deface an existing label on containers of the PMN substance obtained from persons outside the Company unless the container is immediately re-labeled with the information specified in subparagraph (b)(1)(i) of this section.

(2) The Company shall ensure that each container of the substance leaving its workplace for distribution in commerce is labeled in accordance with this subparagraph (b)(2).

(i) The label shall, at a minimum, contain the following information:

(A) The information prescribed in subparagraph (b)(1)(i) of this section.

(B) The name and address of the manufacturer or a responsible party who can provide additional information on the substance for hazard evaluation and any appropriate emergency procedures.

(ii) The label shall not conflict with the requirements of the Hazardous Materials Transportation Act (18 U.S.C. 1801 et. seq.) and regulations issued under that Act by the Department of Transportation.

(3) The label, or alternative forms of warning, shall be legible and prominently displayed. (4) The label, or alternative forms of warning, shall be printed in English; however, the information may be repeated in other languages.

(5) If the label or alternative form of warning is to be applied to a mixture containing the PMN substance in combination with any other substance that is either subject to another TSCA section 5(e) Order applicable to the Company, or subject to a TSCA section 5(a)(2) SNUR at 40 CFR Part 721, subpart E, or defined as a "hazardous chemical" under the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR 1900.1200), the Company may prescribe on the label, MSDS, or alternative form of warning, the measures to control worker exposure or environmental release which the Company determines provide the greatest degree of protection. However, should these control measures differ from the applicable measures required under this Order, the Company must seek a determination of equivalency for such alternative control measures pursuant to 40 CFR 721.30 before prescribing them under this subparagraph (b)(5).

(c) Material Safety Data Sheets. (1) The Company must obtain or develop an MSDS for the PMN substance.

(2) The MSDS shall contain, at a minimum, the following information:

(i) The identity used on the container label of the PMN substance under this section, and, if not claimed confidential, the chemical and common name of the PMN substance. If the chemical and common name are claimed confidential, a generic chemical name must be used.

(ii) Physical and chemical characteristics of the substance known to the Company, (e.g., vapor pressure, flash point).

(iii) The physical hazards of the substance known to the Company, including the potential for fire, explosion, and reactivity.

(iv) The potential human and environmental hazards as specified in paragraph (g) of this section.

(v) Signs and symptoms of exposure, and any medical conditions which are expected to be aggravated by exposure to the PMN substance known to the Company.

(vi) The primary routes of exposure to the PMN substance.

(vii) Precautionary measures to control worker exposure and/or environmental release required by this Order, or alternative control measures which EPA has determined under 40 CFR 721.30 provide substantially the same degree of protection as the identified control measures. The MSDS must identify any New Chemical Exposure Limits specified in paragraph (b) of the New Chemical Exposure Limit section of this Order and must contain the information specified in the graduated respirator table in paragraph (e)(2) of the New Chemical Exposure Limit section.

(viii) Any generally applicable precautions for safe handling and use of the PMN substance which are known to the Company, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for response to spills and leaks.

(ix) Any generally applicable control measures which are known to the Company, such as appropriate engineering controls, work practices, or personal protective equipment.

(x) Emergency first aid procedures known to the Company.

(xi) The date of preparation of the MSDS or of its last revision.

(xii) The name, address, and telephone number of the Company or another responsible party who can provide additional information on the chemical substance and any appropriate emergency procedures.

(3) If no relevant information is found or known for any given category on the MSDS, the Company must mark the MSDS to indicate that no applicable information was found.

(4) Where multiple mixtures containing the PMN substance have similar compositions (i.e., the chemical ingredients are essentially the same, but the specific composition varies from mixture to mixture) and similar hazards, the Company may prepare one MSDS to apply to all of these multiple mixtures.

(5) If the Company becomes aware of any significant new information regarding the hazards of the PMN substance or ways to protect against the hazards, this new information must be added to the MSDS within 3 months from the time the Company becomes aware of the new information. If the PMN substance is not being manufactured, imported, processed, or used in the Company's workplace, the Company must add the new information to the MSDS before the PMN substance is reintroduced into the workplace.

(6) The Company must ensure that persons receiving the PMN substance from the Company are provided an appropriate MSDS with their initial shipment and with the first shipment after an MSDS is revised. The Company may either provide the MSDS with the shipped containers or send it to the person prior to or at the time of shipment.

(7) The Company must maintain a copy of the MSDS in its workplace, and must ensure that it is readily accessible during each work shift to employees when they are in their work areas.

(8) The MSDS may be kept in any form, including as operating procedures, and may be designed to cover groups of substances in a work area where it may be more appropriate to address the potential hazards of a process rather than individual substances. However, in all cases, the required information must be provided for the PMN substance and must be readily accessible during each work shift to employees when they are in their work areas.

(9) The MSDS must be printed in English; however, the information may be repeated in other languages.

(d) Employee Information and Training. The Company must ensure that employees are provided with information and training on the PMN substance. This information and training must be provided at the time of each employee's initial assignment to a work area containing the PMN substance and whenever the PMN substance is introduced into the employee's work area for the first time.

(1) The information provided to employees under this paragraph shall include:

(i) The requirements of this section.

(ii) Any operations in the work area where the PMN substance is present.

(iii) The location and availability of the written hazard communication program required under paragraph (a) of this section, including the list of substances required by subparagraph (a)(1) of this section and MSDSs required by paragraph (c) of this section.

(2) The training provided to employees shall include:

(i) Methods and observations that may be used to detect the presence or release of the PMN substance in or from an employee's work area (such as monitoring conducted by the Company, continuous monitoring devices, visual appearance, or odor of the substance when being released).

(ii) The potential human health and environmental hazards of the PMN substance as specified in paragraph (g) of this section.

(iii) The measures employees can take to protect themselves and the environment from the PMN substance, including specific procedures the Company has implemented to protect employees and the environment from exposure to the PMN substance, including appropriate work practices, emergency procedures, personal protective equipment, engineering controls, and other measures to control worker exposure and/or environmental release required under this Order, or alternative control measures which EPA has determined under 40 CFR 721.30 provide the same degree of protection as the specified control measures.

(iv) The requirements of the hazard communication program developed by the Company under this section, including an explanation of the labeling system and the MSDS required by this section and guidance on obtaining and using appropriate hazard information.

(e) Low Concentrations in Mixtures. If the PMN substance is present in the work area only as a mixture, the Company is exempt from the provisions of this section if the concentration of the PMN substance in the mixture does not exceed 1.0 percent by weight or volume, or 0.1 percent by weight or volume if paragraph (g) of this section identifies cancer as a potential human health hazard of the PMN substance. However, this exemption does not apply if the Company has reason to believe that during intended use or processing in the

work area, the PMN substance in the mixture may be reconcentrated above the 1.0 or 0.1 percent level, whichever is applicable.

(f) Existing Hazard Communication Program. The Company need not take additional actions if existing programs and procedures satisfy the requirements of this section.

(g) Human Health, Environmental Hazard, Exposure, and Precautionary Statements. The following human health and environmental hazard and precautionary statements shall appear on each label as specified in paragraph (b) and the MSDS as specified in paragraph (c) of this section:

(1) Human health hazard statements. This substance may cause:

- (i) systemic effects
- (ii) aquatic toxicity effects

(2) Human hazard precautionary statements. When using this substance:

- (i) avoid skin contact.
- (ii) use skin protection.

(3) The human precautionary statement on the label prepared pursuant to paragraph (b) of this section must be followed by the statement: "See the MSDS for details."

MANUFACTURING

(a)(1) The Company shall not cause, encourage, or suggest the manufacture or import of the PMN substance by any other person.

(2) Sunset Following SNUR. Subparagraph (a)(1) shall expire 75 days after promulgation of a final significant new use rule ("SNUR") governing the PMN substance under section 5(a)(2) of TSCA unless the Company is notified on or before that day of an action in a Federal Court seeking judicial review of the SNUR. If the Company is so notified, subparagraph (a)(1) shall not expire until EPA notifies the Company in writing that all Federal Court actions involving the SNUR have been resolved and the validity of the SNUR affirmed.

(3) Notice of SNUR. When EPA promulgates a final SNUR for the PMN substance and subparagraph (a)(1) expires in accordance with subparagraph (a)(2), the Company shall notify each person whom it causes, encourages or suggests to manufacture or import the PMN substance of the existence of the SNUR.

USE

(a) The Company shall not use the PMN substance other than as described in the PMN, i.e., as an [] and/or as an [].

DISTRIBUTION

(a) Distribution Requirements. Except as provided in paragraph (b), the Company shall distribute the PMN substance outside the Company, other than for disposal, only to a person who has agreed in writing prior to the date of distribution, to:

(1) Not further distribute the PMN substance to any other person, other than for disposal, until after the PMN substance has been completely reacted.

(2) Comply with the same requirements and restrictions, if any, required of the Company in the Protection in the Workplace section of this Order.

(3) Comply with the same requirements and restrictions, if any, required of the Company in the Hazard Communication Program section of this Order.

(b) Temporary Transport and Storage. Notwithstanding paragraph (a), the Company may distribute the PMN substance outside the Company for temporary transport and storage in sealed containers (labeled in accordance with paragraph (b)(2) of the Hazard Communication Program section of this Order) provided the following two conditions are met:

(1) Subsequent to any such exempt temporary transport or storage of sealed containers, the PMN substance may be distributed only to a person who has given the Company the written agreement required by paragraph (a).

(2) Any human exposure or environmental release resulting from opening the sealed containers and removing or washing out the PMN substance may occur only while the PMN substance is in the possession and control of the Company or a person who has given the Company the written agreement required by paragraph (a).

(c) Recipient Non-Compliance. If, at any time after commencing distribution in commerce of the PMN substance, the Company obtains knowledge that a recipient of the substance has failed to comply with any of the conditions specified in paragraph (a) of this Distribution section or, after paragraph (a)(1) expires in accordance with subparagraph (d)(1), has engaged in a significant new use of the PMN substance (as defined

in 40 CFR Part 721, Subpart E) without submitting a significant new use notice to EPA, the Company shall cease supplying the substance to that recipient, unless the Company is able to document each of the following

(1) That the Company has, within 5 working days, notified the recipient in writing that the recipient has failed to comply with any of the conditions specified in paragraph (a) of this Distribution section, or has engaged in a significant new use of the PMN substance without submitting a significant new use notice to EPA.

(2) That, within 15 working days of notifying the recipient of the noncompliance, the Company received from the recipient, in writing, a statement of assurance that the recipient is aware of the terms of paragraph (a) of this Distribution section and will comply with those terms, or is aware of the terms of the significant new use rule for the PMN substance and will not engage in a significant new use without submitting a significant new use notice to EPA.

(3) If, after receiving a statement of assurance from a recipient under subparagraph (c)(2) of this Distribution section, the Company obtains knowledge that the recipient has failed to comply with any of the conditions specified in paragraph (a) of this Distribution section, or has engaged in a significant new use of the PMN substance without submitting a significant new use notice to EPA, the Company shall cease supplying the PMN substance to that recipient, shall notify EPA of the failure to comply, and shall resume supplying the PMN substance to that recipient only upon written notification from the Agency.

(d) Sunset Following SNUR. (1) Paragraph (a)(1) of this Distribution section shall expire 75 days after promulgation of a final SNUR for the PMN substance under section 5(a)(2) of TSCA, unless the Company is notified on or before that day of an action in a Federal Court seeking judicial review of the SNUR. If the

Company is so notified, paragraph (a)(1) of this Distribution section shall not expire until EPA notifies the Company in writing that all Federal Court actions involving the SNUR have been resolved and the validity of the SNUR affirmed.

(2) When EPA promulgates a final SNUR for the PMN substance and paragraph (a)(1) of this Distribution section expires in accordance with subparagraph (d)(1), the Company shall notify each person to whom it distributes the PMN substance of the existence of the SNUR. Such notification must be in writing and must specifically include all limitations contained in the SNUR which are defined as significant new uses and which would invoke significant new use notification to EPA for the PMN substance. Such notice must also reference the publication of the SNUR for this PMN substance in either the Federal Register or the Code of Federal Regulations. After promulgation of a SNUR and expiration of subparagraph (a)(1), such notice may substitute for the written agreement required in the introductory clause of paragraph (a); so that, if the Company provides such notice to the persons to whom it distributes the PMN substance, then the Company is not required to obtain from such persons the written agreement specified in paragraph (a).

TESTING

(a) Section 8(e) Reporting. Any information on the PMN substance which reasonably supports the conclusion that the PMN substance presents a substantial risk of injury to health or the environment required to be reported under EPA's section 8(e) policy statement at 43 Federal Register 11110 (March 16, 1978), shall reference the appropriate PMN identification number for this substance and shall contain a statement that the substance is subject to this Consent Order. Additional information regarding section 8(e) reporting requirements can be found in the reporting guide referenced at 56 Federal Register 28458 (June 20, 1991).

(b) Notice of Study Scheduling. The Company shall notify, in writing, the EPA Laboratory Data Integrity Branch (2225A), Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, of the following information within 10 days of scheduling any study required to be performed pursuant to this Order (including studies identified in section VI. of the Preamble), or within 15 days after the effective date of this Order, whichever is later:

- (1) The date when the study is scheduled to commence;
- (2) The name and address of the laboratory which will conduct the study;
- (3) The name and telephone number of a person at the Company or the laboratory whom EPA may contact regarding the study; and
- (4) The appropriate PMN identification number for each substance and a statement that the substance is subject to this Consent Order.

(c) Good Laboratory Practice Standards and Test Protocols. Each study required to be performed pursuant to this Order (including studies identified in section VI. of the Preamble) must be conducted according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792 and using methodologies generally accepted in the relevant scientific community at the time the study is initiated. Before starting to conduct any such study, the Company must obtain approval of test protocols from EPA by submitting written protocols. EPA will respond to the Company within 4 weeks of receiving the written protocols. Published test guidelines provide general guidance for development of test protocols, but are not themselves acceptable protocols. Approval of the test protocol does not mean pre-acceptance of test results.

(d) Unreasonable Risk.

(1) EPA may notify the Company in writing that EPA finds that the data generated by a study are scientifically valid and unequivocal and indicate that, despite the terms of this Order, the PMN substance will or may present an unreasonable risk of injury to human health or the environment. EPA's notice may specify that the Company undertake certain actions concerning further testing, manufacture, import, processing, distribution, use and/or disposal of the PMN substance to mitigate exposures to or to better characterize the risks presented by the PMN substance. Within 2 weeks from receipt of such a notice, the Company must cease all manufacture, import, processing, distribution, use and disposal of the PMN substance, unless either:

(2) within 2 weeks from receipt of the notice described in subparagraph (d)(1), the Company complies with such requirements as EPA's notice specifies; or

(3) within 4 weeks from receipt of the notice described in subparagraph (d)(1), the Company submits to EPA a written report refuting EPA's finding and/or the appropriateness of any additional requirements imposed by EPA. The Company may continue to manufacture, import, process, distribute, use and dispose of the PMN substance in accordance with the terms of this Order pending EPA's response to the Company's written report. EPA will respond to the Company, in writing, within 4 weeks of receiving the Company's report. Within 2 weeks of receipt of EPA's written response, the Company shall comply with any requirements imposed by EPA's response or cease all manufacture, import, processing, distribution, use and disposal of the PMN substance.

II. RECORD-KEEPING

(a) Records. The Company shall maintain the following records until 5 years after the date they are created and shall make them available for inspection and copying by EPA in accordance with section 11 of TSCA:

(1) Records documenting the manufacture and importation volume of the PMN substance and the corresponding dates of manufacture and import;

(2) Records documenting the names and addresses (including shipment destination address, if different) of all persons outside the site of manufacture or import to whom the Company directly sells or transfers the PMN substance, the date of each sale or transfer, and the quantity of the substance sold or transferred on such date;

(3) Records documenting establishment and implementation of a program for the use of any applicable personal protective equipment required pursuant to the Protection in the Workplace section of this Order;

(4) Records documenting the determinations required by the Protection in the Workplace section of this Order that chemical protective clothing is impervious to the PMN substance;

(5) Records documenting establishment and implementation of the hazard communication program required by the Hazard Communication Program section of this Order;

(6) Copies of labels required under the Hazard Communication Program section of this Order;

(7) Copies of material safety data sheets required by the Hazard Communication Program section of this Order;

(8) Records documenting compliance with any applicable manufacturing and distribution restrictions in the Manufacturing and Distribution sections of this Order, including distributees' written agreement to comply with the Distribution section of this Order;

(9) Copies of any Transfer Documents and notices required by the Successor Liability section of this Order, if applicable; and

(10) The Company shall keep a copy of this Order at each of its sites where the PMN substance is manufactured, imported, processed or used.

(b) Applicability. The provisions of this Record-keeping Section are applicable only to activities of the Company and its Contract Manufacturer, if applicable, and not to activities of the Company's customers.

III. SUCCESSOR LIABILITY UPON TRANSFER OF CONSENT ORDER

(a) Scope. This section sets forth the procedures by which the Company's rights and obligations under this Order may be transferred when the Company transfers its interests in the PMN substance, including the right to manufacture the PMN substance, to another person outside the Company (the "Successor in Interest").

(b) Relation of Transfer Date to Notice of Commencement ("NOC").

(1) Before NOC. If the transfer from the Company to the Successor in Interest is effective before EPA receives a notice of commencement of manufacture or import ("NOC") for the PMN substance from the Company pursuant to 40 CFR 720.102, the Successor in Interest must submit a new PMN to EPA and

comply fully with Section 5(a)(1) of TSCA and 40 CFR part 720 before commencing manufacture or import of the PMN substance.

(2) After NOC. If the transfer from the Company to the Successor in Interest is effective after EPA receives a NOC, the Successor in Interest shall comply with the terms of this Order and is not required to submit a new PMN to EPA.

(c) Definitions. The following definitions apply to this Successor Liability section of the Order:

(1) "Successor in Interest" means a person outside the Company who has acquired the Company's full interest in the rights to manufacture the PMN substance, including all ownership rights and legal liabilities through a transfer document signed by the Company, as transferor, and the Successor in Interest, as transferee. The term excludes persons who acquire less than the full interest of the Company in the PMN substance, such as a licensee who has acquired a limited license to the patent or manufacturing rights associated with the PMN substance. A Successor in Interest must be incorporated, licensed, or doing business in the United States in accordance with 40 CFR 720.22(3).

(2) "Transfer Document" means the legal instrument(s) used to convey the interests in the PMN substance, including the right to manufacture the PMN substance, from the Company to the Successor in Interest.

(d) Notices.

(1) Notice to Successor in Interest. On or before the effective date of the transfer, the Company shall provide to the Successor in Interest, by registered mail, a copy of the Consent Order and the "Notice of Transfer" document which is incorporated by reference as Attachment C to this Order.

(2) Notice to EPA. Within 10 business days of the effective date of the transfer, the Company shall, by registered mail, submit the fully executed Notice of Transfer document to: U.S. Environmental Protection Agency, New Chemicals Branch (7405M), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

(3) Transfer Document. Copies of the Transfer Document must be maintained by the Successor in Interest at its principal place of business, and at all sites where the PMN substance is manufactured or imported. Copies of the Transfer Document must also be made available for inspection pursuant to Section 11 of TSCA, must state the effective date and time of transfer, and must contain provisions which expressly transfer liability for the PMN substance under the terms of this Order from the Company to the Successor in Interest.

(e) Liability.

(1) The Company shall be liable for compliance with the requirements of this Order until the effective date and time of the transfer described above.

(2) The Successor in Interest shall be liable for compliance with the requirements of this Order effective as of the date and time of transfer.

(3) Nothing in this section shall be construed to prohibit the Agency from taking enforcement action against the Company after the effective date of the transfer for actions taken, or omissions made, during the

time in which the Company manufactured, processed, used, distributed in commerce, or disposed of the PMN substance pursuant to the terms of this Consent Order.

(f) Obligations to Submit Test Data under Consent Order. If paragraph (d) of the Testing section of this Consent Order requires the Company to submit test data to EPA at a specified production volume ("test trigger"), the aggregate volume of the PMN substance manufactured and imported by the Company up to the date of transfer shall count towards the test trigger applicable to the Successor in Interest.

IV. MODIFICATION AND REVOCATION OF CONSENT ORDER

The Company may petition EPA at any time, based upon new information on the health effects of, or human exposure to, the PMN substance, to modify or revoke substantive provisions of this Order. The exposures and risks identified by EPA during its review of the PMN substance and the information EPA determined to be necessary to evaluate those exposures and risks are described in the preamble to this Order. However, in determining whether to amend or revoke this Order, EPA will consider all relevant information available at the time the Agency makes that determination, including, where appropriate, any reassessment of the test data or other information that supports the findings in this Order, an examination of new test data or other information or analysis, and any other relevant information.

EPA will issue a modification or revocation if EPA determines that the activities proposed therein will not present an unreasonable risk of injury to health or the environment and will not result in significant or substantial human exposure or substantial environmental release in the absence of data sufficient to permit a reasoned evaluation of the health or environmental effects of the PMN substance.

In addition, the Company may petition EPA at any time to make other modifications to the language of this Order. EPA will issue such a modification if EPA determines that the modification is useful, appropriate, and consistent with the structure and intent of this Order as issued.

V. EFFECT OF CONSENT ORDER

By consenting to the entry of this Order, the Company waives its rights to file objections to this Order pursuant to section 5(e)(1)(C) of TSCA, to receive service of this Order no later than 45 days before the end of the review period pursuant to section 5(e)(1)(B) of TSCA, and to challenge the validity of this Order in any subsequent action. Consenting to the entry of this Order, and agreeing to be bound by its terms, does not constitute an admission by the Company as to, the facts or conclusions underlying the Agency's determinations in this proceeding. This waiver does not affect any other rights that the Company may have under TSCA.

Date

Jim Willis, Director
Chemical Control Division
Office of Pollution Prevention and Toxics

Date

Name:

Title:

Company: []

ATTACHMENT A

DEFINITIONS

[Note: The attached Order may not contain some of the terms defined below.]

"Chemical name" means the scientific designation of a chemical substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service's rules of nomenclature, or a name which will clearly identify a chemical substance for the purpose of conducting a hazard evaluation.

"Chemical protective clothing" means items of clothing that provide a protective barrier to prevent dermal contact with chemical substances of concern. Examples can include, but are not limited to: full body protective clothing, boots, coveralls, gloves, jackets, and pants.

"Company" means the person or persons subject to this Order.

"Commercial use" means the use of a chemical substance or any mixture containing the chemical substance in a commercial enterprise providing saleable goods or a service to consumers (e.g., a commercial dry cleaning establishment or painting contractor).

"Common name" means any designation or identification such as code name, code number, trade name, brand name, or generic chemical name used to identify a chemical substance other than by its chemical name.

"Consumer" means a private individual who uses a chemical substance or any product containing the chemical substance in or around a permanent or temporary household or residence, during recreation, or for any personal use or enjoyment.

"Consumer product" means a chemical substance that is directly, or as part of a mixture, sold or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in recreation.

"Container" means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. For purposes of this section, pipes or piping systems, and engines, fuel tanks, or other operating systems in a vehicle, are not considered to be containers.

"Contract Manufacturer" means a person, outside the Company, who is authorized to manufacture and import the PMN substance under the conditions specified in Part II. of this Consent Order and in the Consent Order for Contract Manufacturer.

"Identity" means any chemical or common name used to identify a chemical substance or a mixture containing that substance.

"Immediate use." A chemical substance is for the "immediate use" of a person if it is under the control of, and used only by, the person who transferred it from a labeled container and will only be used by that person within the work shift in which it is transferred from the labelled container.

"Impervious." Chemical protective clothing is "impervious" to a chemical substance if the substance causes no chemical or mechanical degradation, permeation, or penetration of the chemical protective clothing under the conditions of, and the duration of, exposure.

"Manufacturing stream" means all reasonably anticipated transfer, flow, or disposal of a chemical substance, regardless of physical state or concentration, through all intended operations of manufacture, including the cleaning of equipment.

"MSDS" means material safety data sheet, the written listing of data for the chemical substance.

"NIOSH" means the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services.

"Non-enclosed process" means any equipment system (such as an open-top reactor, storage tank, or mixing vessel) in which a chemical substance is manufactured, processed, or otherwise used where significant direct contact of the bulk chemical substance and the workplace air may occur.

"Non-industrial use" means use other than at a facility where chemical substances or mixtures are manufactured, imported, or processed.

"PMN substance" means the chemical substance described in the Premanufacture notice submitted by the Company relevant to this Order.

"Personal protective equipment" means any chemical protective clothing or device placed on the body to prevent contact with, and exposure to, an identified chemical substance or substances in the work area. Examples include, but are not limited to, chemical protective clothing, aprons, hoods, chemical goggles, face splash shields, or equivalent eye protection, and various types of respirators. Barrier creams are not included in this definition.

"Process stream" means all reasonably anticipated transfer, flow, or disposal of a chemical substance, regardless of physical state or concentration, through all intended operations of processing, including the cleaning of equipment.

"Scientifically invalid" means any significant departure from the EPA-approved protocol or the Good Laboratory Practice Standards at 40 CFR Part 792 without prior or subsequent Agency approval that prevents a reasoned evaluation of the health or environmental effects of the PMN substance.

"Scientifically equivocal data" means data which, although developed in apparent conformity with the Good Laboratory Practice Standards and EPA-approved protocols, are inconclusive, internally inconsistent, or otherwise insufficient to permit a reasoned evaluation of the potential risk of injury to human health or the environment of the PMN substance.

"Sealed container" means a closed container that is physically and chemically suitable for long-term containment of the PMN substance, and from which there will be no human exposure to, nor environmental release of, the PMN substance during transport and storage.

"Use stream" means all reasonably anticipated transfer, flow, or disposal of a chemical substance, regardless of physical state or concentration, through all intended operations of industrial, commercial, or consumer use

"Waters of the United States" has the meaning set forth in 40 CFR 122.2.

"Work area" means a room or defined space in a workplace where the PMN substance is manufactured, processed, or used and where employees are present.

"Workplace" means an establishment at one geographic location containing one or more work areas.

ATTACHMENT B
NOTICE OF TRANSFER
OF
TOXIC SUBSTANCES CONTROL ACT
SECTION 5(e) CONSENT ORDER

P04-132	
Company (Transferor)	PMN Number

1. Transfer of Manufacture Rights. Effective on _____, the Company did sell or otherwise transfer to _____, ("Successor in Interest") the rights and liabilities associated with manufacture of the above-referenced chemical substance, which was the subject of a premanufacture notice (PMN) and is governed by a Consent Order issued by the U.S. Environmental Protection Agency (EPA) under the authority of §5(e) of the Toxic Substances Control Act (TSCA, 15 U.S.C. §2604(e)).

2. Assumption of Liability. The Successor in Interest hereby certifies that, as of the effective date of transfer all actions or omissions governed by the applicable Consent Order limiting manufacture, processing, use, distribution in commerce and disposal of the PMN substance, shall be the responsibility of the Successor in Interest. Successor in Interest also certifies that it is incorporated, licensed, or doing business in the United States in accordance with 40 CFR 720.22(3).

3. Confidential Business Information. The Successor in Interest hereby:

___ reasserts,

___ relinquishes, or

___ modifies

all Confidential Business Information (CBI) claims made by the Company, pursuant to Section 14 of TSCA and 40 CFR part 2, for the PMN substance(s). Where "reasserts" or "relinquishes" is indicated, that designation shall be deemed to apply to all such claims. Where "modifies" is indicated, such modification shall be explained in detail in an attachment to this Notice of Transfer.

TOXIC SUBSTANCES CONTROL ACT
SECTION 5(e) CONSENT ORDER

NOTICE OF TRANSFER (cont.)

Company (Transferor)

P04-132
PMN Number

Signature of Authorized Official

Date

Printed Name of Authorized Official

Title of Authorized Official

Successor in Interest

Signature of Authorized Official

Date

Printed Name of Authorized Official

Title of Authorized Official

Address

City, State, Zip Code

TOXIC SUBSTANCES CONTROL ACT
SECTION 5(e) CONSENT ORDER

NOTICE OF TRANSFER (cont.)

Successor's Technical Contact

Address

City, State, Zip Code

Phone